

REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-19 are pending in this application.

Applicants note with appreciation the Examiner's acknowledgement that certified copies of all priority documents have been received by the U.S.P.T.O.

Applicants also appreciate the Examiner's indication that the Information Disclosure Statement filed on September 15, 2006, has been considered.

Applicants also respectfully note that the present action does not indicate that the drawings have been accepted by the Examiner. Applicants respectfully request that the Examiner's next communication include an indication as to the acceptability of the filed drawings or as to any perceived deficiencies so that the Applicants may have a full and fair opportunity to submit appropriate amendments and/or corrections to the drawings.

Allowable Subject Matter

Claims 4, 8, 10, 11, 14, 16, and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the features of the base claim and any intervening claims. Applicants respectfully submit, however, that claims 1-3, 5-7, 9, 12, 13, 15, 17, and 19 are also allowable in view of the following remarks.

Claim Rejections - 35 U.S.C. § 102/103

Claims 1-3, 5-7, 9, 12, 13, 15, 17, and 19 are rejected under 35 U.S.C. § 102(e) as anticipated by or, in the alternative, under 35 U.S.C. §103(a) as obvious over U.S. Patent Application No. 2004/0112810 ("Frommann"). Applicants respectfully traverse this rejection for the reasons discussed below.

Applicants respectfully submit that the Frommann reference fails to disclose or suggest each and every element of claim 1, and therefore, an anticipatory rejection has not been established.¹

For example, claim 1 recites a bottom seal comprising, *inter alia*:

at least one elongate bottom coverbeing pivotable up and down close to and past the edges upstream on the lowermost steps of the fixed lamellar rods.

In particular, Applicants respectfully submit that the Frommann reference fails to disclose or suggest, "the bottom cover being pivotable up and down," as recited in claim 1.

The Frommann reference merely discloses a device for the separation and removal of material from a flowing liquid. The device has fixed blades (22) and movable blade (23), whereby a movable blade is installed between every two fixed blades (see Fig. 1). The movable blades (23) perform circular or elliptical movement in which the movable blades (23) seize and lift up the dirt particles that are on steps of the fixed blades (22), and deposit them on the step (24) above the fixed blades (22). See paragraph [0019].

¹ A claim is anticipated only if each and every element as forth in the claim is found, either expressly or inherently described, in a single prior art reference. See MPEP § 2131; *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir.1987).

More specifically, Fig. 3 of the Frommann reference discloses a sealing arrangement having a cover (5) with an elastic sealing lip (530). In paragraph [0027], it is described that the cover (5) does not assume the guidance of the movable blades (23) directly, but instead, by a doubling (26) member located in the lower region of the fixed blades (not shown in Fig. 3), i.e., the elastic sealing lip (530) is reaching at least in part over the doublings (26). The elastic sealing lip (530) is thus supported by the doublings (26), and pushed only away upwards from the steps of the movable blades (23), see paragraph [0028] and Fig. 3. In addition, since the doublings (26) are attached to the fixed blades (22) (see paragraph [0031]), the doublings (26) are not movable. Hence, although the sealing lip (530) is elastic, it can not be pivoted down since the doublings (26) attached to the fixed blades (22) prevent it from performing such a motion. Consequently, the sealing lip (530) can not follow the entire motion of the movable blades (23).²

Further, in the outstanding Office Action, the Examiner appears to assert that since the sealing lip (530) disclosed in Fromman is flexible, the sealing lip (530) appears to pivot by being moved by the action of the movable blades (23). However, based on the teachings of paragraphs [0027], [0028] and [0031] and Fig. 3 in Frommann discussed above, it is submitted that the sealing lip (530) is pivotable only in the upward direction, i.e., the doublings (26) prevent it to pivot downwardly. Hence, the sealing lip (530) is able to follow only a part of the motion of the movable blades (23). As a result, ducts through which large particles and objects can pass more or less unimpededly will be formed between the fixed blades (22) at their lowest most

² It should be noted that in Fig. 3 it may look like the doublings (26) are attached to the movable blades (23) since the fixed blades (22) are not shown, but this is not the case.

steps. Accordingly, the feature of “a bottom cover being pivotable up and down” is not disclose in Fromman and, thus, claim 1 is not anticipated.

Therefore, contrary to the Examiner’s contention, the Frommann reference does not disclose or suggest each and every element of claim 1.

Since the Frommann reference fails to disclose each and every element of claim 1, it cannot provide a basis for a rejection under 35 U.S.C. § 102(e) and, thus, is allowable. Claims 2, 3, 5-7, 9, 12, 13, 15, 17, and 19 depend from claim 1 and, therefore, allowable for the similar reasons discussed above with respect to claim 1.

Further, in order to establish a *prima facie* case of obviousness, the Examiner must establish that it would have been obvious for one of ordinary skill to have modified and/or combined the teachings of the cited documents.³ One way to establish this would be to show “some articulated reasoning with some rationale underpinning to support the legal conclusion of obviousness” and “identify a reason that would have prompted a person of ordinary skill in the relevant field to modify and/or combine the elements in the way the claimed new invention does.”⁴ Furthermore, the Examiner must make “*explicit*” this rationale of “the apparent reason to modify and/or combine the known elements in the fashion claimed,” including a detailed explanation of “the effects of demands known to the design community or present in the marketplace” and “the background knowledge possessed by a person having ordinary skill in the art.”⁵

It is respectfully submitted that the Examiner has not met these criteria. For instance, an example embodiment of the present invention discloses a bottom seal

³ See *KSR Int’l Co. v. Teleflex, Inc.*, 550 U.S. at ___, 82 USPQ2d at 1396 (2007).

⁴ *Id.*

having at least one elongated bottom cover 11 that follows the motion of the movable lamellar rods 5. In the motion, the bottom cover 11 is being pivotalable up and down close to and past the edges upstream on the lowermost steps 8 of the fixed lamellar rods 4. Therefore, the bottom cover 11 is able to follow the entire motion of the movable lamellar rods 5, otherwise, undesired ducts would be formed between the fixed lamellar rods 4 at their lowermost steps 8. Through these ducts, large particles and objects could pass more or less unimpededly owing to the relatively high speed of the flowing water and be entrained with the flowing water. As a result, the water would not be sufficiently screened, thus requiring additional screening and/or causing problems in the subsequent treatment of water.

Accordingly, a difference between Frommann and the claimed invention is that the bottom cover according to an example embodiment may be pivotalable up and down. Since the sealing lip (530) in Frommann is pivotalable only in the upward direction, it can not follow the entire motion of the movable blades. One objective of the claimed invention is to seal the ducts that are formed between the fixed lamellar rods at their lower most steps as the movable lamellar rods move between the fixed lamellar rods.

Therefore, one skilled in the art starting from Frommann faced with the problem above would not end up at the claimed invention because there is no indication in Frommann itself of how to make the sealing lip (530) pivotalable up and down. A modification in the direction of the claimed invention would require that the doublings (26) are removed or modified. The doublings (26) attached to the fixed blades (22) assume lateral guidance of the movable blades (23), see paragraph [0031]. Also, a greater stability of the fixed blades (22) are achieved by the doublings (26), see

⁵ *Id.*

paragraph [0027]. The doublings (26) as taught in the Frommann reference are thus important for the function of the device and it is therefore not likely that the skilled person trying to solve the objective problem above would remove or modify them. Accordingly, because the proposed modification of the Frommann reference would require substantial reconstruction and redesign as well as change the basic principle of operation, no *prima facie* case of obviousness has been established.

In view of the above, Applicants respectfully submit that one of ordinary skill in the art would not have modified the teachings of the Frommann reference in the manner used to reject the claims, and that the Frommann reference fails to teach or suggest all of the elements of claim 1. Thus, no *prima facie* case of obviousness has been established. Accordingly, claim 1 is allowable over the Frommann reference. Dependent claims 2, 3, 5-7, 9, 12, 13, 15, 17 and 19 depend from claim 1 and are allowable for at least the reasons that claim 1 is allowable. Therefore, Applicants respectfully request that the rejection of claims 1-3, 5-7, 9, 12, 13, 15, 17 and 19 be favorable reconsidered and withdrawn.

CONCLUSION

In view of the above remarks and amendments, Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. Further, the above remarks demonstrate the failings of the outstanding rejections, and are sufficient to overcome the rejections. However, these remarks are not intended to, nor need they, comprehensively address each and every reason for the patentability of the claimed subject matter over the applied prior art.

Accordingly, Applicants do not contend that the claims are patentable solely on the basis of the particular claim elements discussed above.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned, at the telephone number below.


Pursuant to 37 C.F.R. §§ 1.17 and 1.136(a), Applicants hereby petition for a one (1) month extension of time for filing a reply to the outstanding Office Action and submit the required \$130.00 extension fee herewith.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

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